
From: Powers, David
To: Wu, Jennifer; keenan.druscilla@epa.gov; Henning, Alan; Chung, Angela; Kubo, Teresa; Rueda, Helen; Croxton, Dave; Rueda, Helen
CC: Psyk, Christine; Opalski, Dan
Sent: 2/4/2014 8:17:18 PM
Subject: FW: Re:

According to DEQ, RipStream-based simulations that ODF completed after our last meeting indicate that an 80' nocut buffer may be needed around small and medium fish streams to meet the State's protection of coldwater criteria (PCW). PCW was designed to protect ESA listed salmonid spawning and rearing. I anticipate that ODF and the timber industry may push to limit the new riparian rules to the subset of small and medium fish bearing streams that support ESA listed salmonids... rather than all small and medium fish streams. An interesting tradeoff concept might be increasing protection around the non-fish bearing streams (Type N) that contribute cold water to streams with ESA listed salmon and trout. Currently ODF is not pursuing rule changes for Type N streams. I strongly believe that all fish bearing streams, not just those with ESA listed salmon and trout, need increased riparian protection in OR. However, from a PCW/ESA perspective there is some logic to looking at a more focused Type F/Type N scenario. Increased Type N stream protection could also move the State closer to an approvable CNPCP. DEQ and NOAA Fisheries are currently discussing Type N streams in terms of meeting PCW criteria.

Getting a clear understanding of what PCW covers and doesn't cover is important. I excerpted some thoughts in an old e-mail from Dru Keenan who helped develop the PCW criteria and work through ESA consultation with the Services. Dru sent the e-mail to me before I testified before the Board of Forestry. I told the Board that EPA supported their direction to ODF to begin analysis to support rule options for fish bearing streams. I added that increased riparian protection around Type N streams was also key to meeting the PCW criteria (which was the stated reason for developing fish stream rule options). Dru's take:

Hi Dave, sorry for the delay in responding to your message. Oregon's temperature standard includes a criterion for the protection of existing cold water. The criterion applies to all rearing, spawning, and bull trout designated waters.

The criterion reads: (a) Except as described in subsection (c) of this rule, waters of the State that have summer seven-day-average maximum ambient temperatures that are colder than the biologically based criteria in section (4) of this rule, may not be warmed by more than 0.3 degrees Celsius (0.5 degrees F) above the colder water ambient temperature. This provision applies to all source taken together at the point of maximum impact where salmon, steelhead or bull trout are present. For spawning in winter months, the allowance for warming is slightly more, based on the assumption that winter water temperatures are very low.

(c) pertains to where this provision does not apply: (A) There are no T&E salmonids currently inhabiting the water body; (B) The water body has not been designated as critical habitat; and (C) *The colder water is not necessary to ensure that downstream temperatures achieve and maintain compliance with the applicable temperature criteria.* which means that even if it is not a fish bearing stream, but downstream it is and that cold water is need in order to meet the downstream use (at all times of the year), the PCW criterion applies.

So the long and short of it is, if the temperature of the water body is below the rearing or spawning criterion, you can not let it rise to the criterion level. It can only be warmed 0.3 C over the ambient cold temperature.

Hope this helps
Dru

From: Powers, David
Sent: Monday, February 03, 2014 10:49 AM
To: allison.castellan@noaa.gov
Cc: Psyk, Christine; Wayne, Don; Henning, Alan; Joelle Gore - NOAA Federal; Wu, Jennifer

Subject: RE: Re:

I think Alan and I are up to speed on the 3 conditional areas...if there is anything new from an EPA HQ/NOAA perspective on the latest State OSDS/new developments approach we may want to touch base. Alan and I are meeting the week before the Tillamook presentation date and we will try to touch base with DEQ to help make sure there are no surprises.

There may be some more detail on the small and medium fish stream rule soon. A couple of Forestry Board members and the timber industry folks are increasingly worried that a substantive forestry rule change will be needed to meet the PCW criteria. Increased efforts to discredit the DEQ PCW criteria are already underway by OFIC/timber interests.

I anticipate possible efforts to limit the scope of the ODF riparian rule to increased protection around small and medium fish streams that are critical habitat for T&E salmon and trout (versus all small and medium fish streams in the CZM).

Ex. 5 - Deliberative

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I'll follow up with Kim Kratz and Jeff Lockwood. Dave

From: Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>

Sent: Monday, February 03, 2014 10:29 AM

To: Powers, David

Cc: Psyk, Christine; Waye, Don; Henning, Alan; Joelle Gore - NOAA Federal

Subject: Re:

Thanks Dave for the update. If you need anything else from me, let me know.

On Mon, Feb 3, 2014 at 12:47 PM, Powers, David <Powers.David@epa.gov> wrote:

Alan talked to David Wells from the Tillamook Watershed Association and we have a slot on their 2/25/2014 meeting agenda. Alan will cover OSDS, new developments, and ag and I will cover forestry. We understand that DEQ (we think Greg Aldrich) will also present during the OR CZARA timeslot. I'll touch base with Greg and Gene before the meeting. Dave

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